

CHAPTER 4 IADA LOAN PARTICIPATION PROGRAM

25—4.1(175) Program summary. The Iowa agricultural development authority (IADA) loan participation program for qualified farmers (hereafter referred to as “program”) is intended to assist lenders and qualified farmers (hereafter referred to as “borrower(s)”) by participating in a loan for the purchase of agricultural property. This chapter will be known as the IADA loan participation program.

4.1(1) Supplement borrower’s down payment. The participation can be used to supplement the borrower’s down payment so that the borrower can more readily secure a loan (the “participated loan”) from a participating lender (the “lender”).

4.1(2) IADA’s last-in/last-out collateral position. The program enables lenders to request a “last-in/last-out” loan participation (the “participation”) from the Iowa agricultural development authority (the “authority”). The lender, on behalf of the borrower, shall apply for the participation on application forms provided by the authority. The authority board and staff will review the application and make a determination regarding approval of a participation.

4.1(3) Lender’s certification. The lender and the borrower shall certify that:

- a. The information included in the application and any other documents submitted to the authority for consideration is true and correct to the best of their knowledge.
- b. Borrower is a low-income farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.
- c. No other state or private credit is available or can be obtained in a timely manner.

4.1(4) Participation loan in conjunction with beginning farmer loan. The loan participation program may be used in conjunction with the authority’s beginning farmer loan program, providing the borrower meets the criteria for both programs respectively. In these instances, the lender will have the borrower sign one promissory note to cover the loan funds to purchase the “aggie bond” as well as the down payment loan funds to be participated with the authority.

25—4.2(175) Definitions. As used in this chapter, unless the context otherwise requires:

“Agricultural improvements” means any improvements, buildings, structures, or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements are defined in Iowa Code chapter 175 to include a single-family dwelling located on agricultural land, which is or will be occupied by the borrower, and structures attached to or incidental to the use of the dwelling.

“Agricultural land” means land suitable for use in farming and which is or will be operated as a farm.

“Agricultural property” means agricultural land, agricultural improvements, or depreciable agricultural property.

“Application” means a completed instrument on a form approved by the authority. Each application must include the following: borrower’s name, address, financial data, description of anticipated use of loan proceeds, amount of loan, down payment amount (if any), statement of borrower’s net worth determined in accordance with authority rules, a summary of proposed loan terms, and certifications of the borrower.

“Authority” means the agricultural development authority established in Iowa Code section 175.3.

“Corporation” or *“domestic corporation”* means a corporation for profit, which is incorporated under Iowa Code chapter 490 and not a foreign corporation. To comply under this program, such corporation shall have no more than two corporate shareholders. Shareholder means the person in whose name the shares are registered in the records of the corporation.

“Depreciable agricultural property” means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the Internal Revenue Code of 1986.

“Farm” means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

“Farming” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority’s rules.

“Lender” means any regulated bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality, or other financial institution or entity authorized to make mortgage loans or secured loans in this state.

“Limited liability company” means a limited liability company as defined in Iowa Code section 490A.102.

“Low-income farmer” means a farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

“Net worth” means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the net worth of the individual, partnership, limited liability company or corporation. Assets shall be valued at fair market value.

“Participated loan” means the aggregate amount of a loan that is participated in total by the lender and the Iowa agricultural development authority.

“Participation” means the “last-in/last-out” loan participation requested by the lender from the Iowa agricultural development authority.

“Partnership” means a partnership formed by two or more persons under the laws of the state of Iowa.

“Projected gross income” is the total of all nonfarm income plus gross farm revenues which include revenue from cash sales, inventory and receivable charges; crops, livestock products, government program payments, and other farm income received by the borrower during the next calendar year.

“Term debt coverage ratio” is the total of net farm income from operations plus total nonfarm income plus depreciation/amortization expense plus interest on term debt plus interest on capital leases minus total income tax expense minus withdrawals for family living multiplied by 100 and divided by the sum of annual scheduled principal and interest payments on term debt and the annual scheduled principal and interest payments on capital leases. The ratio provides a measure of the ability of the borrower to cover all term debt and capital lease payments. The greater the ratio over 100 percent, the greater the margin to cover the payments.

“Total assets” shall include but not be limited to the following: cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“Total liabilities” shall include but not be limited to the following: accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

25—4.3(175) Basic qualification criteria.

4.3(1) Borrower. A borrower may be an individual, partnership, corporation or limited liability company that is a low-income farmer.

4.3(2) Age limits. A borrower must be at least 18 years of age unless the borrower is married. There is no upper age limit.

4.3(3) Residence. Borrower must be an Iowa resident at the time of loan closing and throughout the duration of the participation. Project must be located in Iowa.

4.3(4) Training and experience. The borrower, whether an individual, partnership, corporation or limited liability company, must have documented, to the satisfaction of the authority, sufficient education, training, and experience in the type of farming operation for which the participated loan is requested.

4.3(5) Loan purpose. Loans must be for new purchases of agricultural property; funds may not be used for refinancing, except for those instances when down payment funds are made for a new purchase no more than 60 days prior to the authority approving the participation.

4.3(6) Amount of participated loan. The aggregate amount of the participated loan can be no more than two times the net worth of the borrower.

4.3(7) Net worth.

a. For an individual, an aggregate net worth of the individual and the individual's spouse and minor children (if any) shall be less than \$300,000.

b. For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, together with each partner's spouse and minor children, shall be less than \$600,000. However, the aggregate net worth of each partner, including the partner's net capital in the partnership together with that of the partner's spouse and minor children, shall not exceed \$300,000.

c. For a corporation, an aggregate net worth of all corporate shareholders, including each shareholder's net capital in the corporation plus the net capital of the corporation, shall not exceed \$600,000. The aggregate net worth of each shareholder, including the shareholder's net capital in the corporation together with that of the shareholder's spouse and minor children (if any), shall not exceed \$300,000.

d. For a limited liability company, an aggregate net worth of all members, including each member's ownership interest in the limited liability company, together with that of each member's spouse and minor children, shall be less than \$600,000. However, the aggregate net worth of each member, including the member's ownership interest in the limited liability company together with that of the member's spouse and minor children, shall not exceed \$300,000.

4.3(8) Maximum debt level. Borrower's debts at the time of application:

a. For an individual, and the individual's spouse and minor children (if any) shall be less than \$400,000.

b. For a partnership, including each partner, together with each partner's spouse and minor children, shall be less than \$800,000. However, the aggregate debt of each partner, together with that of the partner's spouse and minor children, shall not exceed \$400,000.

c. For a corporation, its aggregate debt shall not exceed \$800,000. The aggregate debt of each shareholder, together with that of the shareholder's spouse and minor children (if any), shall not exceed \$400,000.

d. For a limited liability company, the aggregate debt of all members, including each member, together with each member's spouse and minor children, shall be less than \$800,000. However, the aggregate debt of each member, together with that of each member's spouse and minor children, shall not exceed \$400,000.

4.3(9) Farm debt-to-asset ratio. Borrower must have a farm debt-to-asset ratio of no more than 80 percent upon completion of loan closing. If the farm debt-to-asset ratio is greater than 60 percent, borrower's projected term debt coverage ratio must be 120 percent or greater. This requirement may be waived if:

a. The project has a guaranteed source of repayment; and

b. An assignment of payment is obtained.

4.3(10) Ratio of current assets to current liabilities. Borrower must have a ratio of current assets to current liabilities better than 1.1 to 1 at the time of application.

4.3(11) Off-farm income. Borrower may have off-farm income, but 50 percent or more of the projected gross income must come from farm income.

4.3(12) *Collateral appraisals.* All real estate and depreciable property intended for use as collateral on a participated loan must be evaluated/appraised by a qualified third-party appraiser. All real estate appraisals must meet the federal regulatory requirements of the lender's examiners and the uniform standards of professional appraisal practice of the appraisal foundation.

4.3(13) *Loan-to-value ratio.*

a. The authority may approve any participation where the borrower does not borrow more than 100 percent of the appraised value or purchase price of the property offered as security for the participated loan.

b. Participation loans for real estate cannot exceed 90 percent of the appraised value of the real estate collateral unless the participation loan is evenly amortized and paid in full in seven years.

[ARC 8157B, IAB 9/23/09, effective 9/2/09]

25—4.4(175) Eligible projects and activities.

4.4(1) *Use of project.* Loans must be for new purchases; funds may not be used for refinancing. Assets purchased with loan funds must be used for agricultural purposes.

a. If the borrower is an individual, the agricultural property purchased with funds from a participated loan shall be used for farming only by the individual, the individual's spouse, or the individual's minor children.

b. If the borrower is a partnership, the agricultural property purchased with funds from a participated loan shall be used for farming only by the partners, each partner's spouse or each partner's minor children.

c. If the borrower is a corporation, the agricultural property purchased with funds from a participated loan shall be used for farming only by the corporate shareholders, each shareholder's spouse or each shareholder's minor children.

d. If the borrower is a limited liability company, the agricultural property purchased with funds from a participated loan shall be used for farming by the members, each member's spouse or each member's minor children.

4.4(2) *Agricultural land.* The participated loan can be used for the purchase of agricultural land, which may include small acreages on which sufficient agricultural improvements are located to conduct a livestock operation. If a house is located on land for which a participation is requested, an appraisal of the house will be made. If the appraised value of the house exceeds 50 percent of the appraised value of the property or total collateral, then the property will not be eligible for a loan.

4.4(3) *Agricultural improvements.* The participated loan can be used for the construction or purchase of improvements located on agricultural land (which is suitable for use in farming). Examples of such improvements include, but are not limited to, the following: confinement systems for swine, cattle, or poultry; barns or other outbuildings; grain storage facilities and silos. There are restrictions regarding participated loans for a personal residence on a farm.

4.4(4) *Livestock used for breeding purposes.* The participated loan can be used for the purchase of livestock for which an income tax deduction for depreciation is allowed in computing state and federal income taxes.

a. Eligible livestock include, but are not limited to, the following: swine, sheep, beef, and dairy cattle used for breeding purposes.

b. Ineligible animals include, but are not limited to, the following: feeder cattle, feeder pigs, feeder lambs, chickens, or turkeys as they do not qualify as depreciable property and, as a result, are not eligible under the program. Other animals that would be ineligible under the program would include horses and those classed as "exotic" such as llamas, fallow deer, ostriches and emus.

c. There are certain provisions included in the loan agreement regarding payments due to the death or sale of livestock included in the loan.

4.4(5) *Machinery and equipment.* The participated loan can be used for the purchase of agricultural machinery and equipment for which an income tax deduction for depreciation is allowed in computing state and federal income taxes. This machinery and equipment must be used in the borrower's farming operation.

4.4(6) Recent purchases. Purchases which can be approved by the authority within 60 days of the purchase date are permitted.

4.4(7) Interim financing by lender. Interim financing by the lender may be done provided the authority has received a written request by the lender explaining the details and justification for interim financing and the expected time frame for participation closing date. Examples: construction projects, buying breeding livestock or machinery.

25—4.5(175) Ineligible projects and activities. The following program activities are ineligible:

4.5(1) Refinancing of existing debt. Refinancing of existing debt or new purchases which have been incurred by the borrower more than 60 days prior to approval of the participation by the authority.

4.5(2) Financing personal expenses. Financing personal or living expenses and working capital to purchase such items as feed, seed, fertilizer, fuel, and feeder livestock.

4.5(3) Down payment funds for contract sale. Down payment to a contract sale, or in connection with a loan from a nonregulated lender.

25—4.6(175) Program maximums.

4.6(1) Purchase price impact. Maximum participation amount is the lesser of:

- a. Thirty percent of the purchase price; or
- b. One hundred fifty thousand dollars.

4.6(2) Net worth factor. The aggregate amount of the participated loan can be no more than three times the net worth of the borrower. This requirement may be waived if:

- a. The project has a guaranteed source of repayment; and
- b. An assignment of payment is obtained.

4.6(3) Real estate collateral issues. A participated loan for real estate:

- a. Cannot exceed 100 percent of the appraised value of the real estate collateral.
- b. Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan including the participation (by the authority).

4.6(4) Loan terms. The authority has established the following with respect to participation terms:

a. The maximum amortization period for the participation is seven years for depreciable agricultural property. When a participated loan is made for livestock, the length of the participation is restricted to the expected useful life of the animal being purchased. The following expected useful life schedules have been approved for livestock: cattle (including beef and dairy) equal 7 years; swine equal 3 years; and sheep equal 7 years.

b. IADA participation loan payments on participated real estate loans will be equally amortized for the term of the participation, but shall not exceed a 20-year amortization, including a 10-year term with balloon payment and the balance of the participation paid in full by the end of the tenth year. If utilized in conjunction with federal programs, the amortization will be consistent with federal rules.

c. The interest rate on the participated loan shall be a fixed rate. The fixed interest rate shall be reviewed by the board on a quarterly basis and adjusted as needed.

4.6(5) Loans outstanding. Loans under the program may be issued more than once, provided that the outstanding participation totals do not exceed \$150,000 to any single borrower.

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25—4.7(175) Loan application procedures.

4.7(1) Financial statement. Lenders may use their own form of financial statement and other forms deemed necessary and appropriate to document the eligibility of the borrower and the borrower's ability to make principal and interest payments. A copy of the borrower's most current financial statement (taken within one month preceding application submission) and the prior two years' financial statements, and a projected after-closing financial statement must be submitted with the application. If a participation is sought with respect to a partnership, a limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

NOTE: If the borrower or the borrower's spouse is involved in a business, partnership, limited liability company, or corporation, for example, either related or unrelated to the borrower's farming operation, a financial statement from this entity must also be submitted with the application.

4.7(2) *Income statement.* A copy of the borrower's most recent income statement, prior three years' income statements, and a projected income statement must be submitted with the application. If historical income statements are not available, then copies of income tax returns may be submitted. If a participation is sought with respect to a partnership, limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

4.7(3) *Background letter.* A "background letter" regarding the borrower must be submitted with the application. This letter should explain the borrower's background with respect to education and experience in the type of farming operation for which a participation is sought. The letter should also outline the borrower's access to machinery, if the participated loan is for land; or the borrower's access to land, if the participated loan is for agricultural improvements or depreciable agricultural property. The letter should also state where the borrower will obtain operating capital.

4.7(4) *Credit evaluation.* The lender will submit a credit evaluation of the project for which a participation is sought. The lender will evaluate the borrower's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of a participation. Such evaluation will center on whether:

a. The borrower adequately demonstrates the ability to service the debt requirements of the participated loan based on cash flow, net worth, down payment, and collateral pledged for the participated loan.

b. The borrower provides sufficient collateral to adequately secure the participated loan and keep the participated loan collateralized throughout its term.

c. The lender certifies that all of the borrower's debts will be current at the time the participated loan is closed.

d. The applicant is a "low-income" farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

e. The lender certifies that no other private or state credit is available or can be obtained in a timely manner.

4.7(5) *Processing loan applications.* Applications for the program will be taken and processed by the authority on a first-come, first-served basis. The authority reserves the right to change the program or terminate the approval of participations under the program at any time. Grounds for termination/suspension of the program would include, but not be limited to, reaching the maximum allowable limit for total outstanding participations as established by the authority or changing the program by order of the Iowa general assembly or by rules promulgated by the authority.

4.7(6) *Security for participated loans and use of security documents.* The lender shall take any security, cosignatures, guarantees, sureties, for example, that are deemed necessary for any participated loan.

a. The authority would advise that any security documents or guarantees required to be used in connection with a participated loan clearly state they are given as security for the indebtedness evidenced by the promissory note and to further secure the agreements, covenants, and obligations of the borrower for the loan involved.

b. The security documents and any guarantees should run directly between the borrower and the lender.

c. Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan including the participation (by the authority).

4.7(7) *Loan terms.* The lender and borrower must agree on terms of the participated loan including interest rate, length of loan, prepayment options, service fees, and repayment schedule. See loan terms in rule 25—4.6(175), Program maximums.

4.7(8) *Fees.* The lender or borrower must submit to the authority a nonrefundable application fee in the amount of \$100 when the application is submitted. A participation closing fee equal to 1.25 percent

of the IADA participation will be deducted from the participation proceeds by the IADA. A minimum participation closing fee of \$300 will be charged.

25—4.8(175) Loan closing procedures.

4.8(1) *IADA conditional commitment.* If the application is approved, a conditional commitment to participate will be sent to the lender.

4.8(2) *Before loan closing.*

a. Lender will submit to IADA:

- (1) Signed conditional commitment to participate.
- (2) Preliminary title opinion on real estate collateral, if applicable.
- (3) Appraiser's certification (completed by third-party appraiser).
- (4) At least three days prior to closing, in the IADA office:
 - Copy of the UCC search on the borrower.
 - Credit Bureau report on the borrower.
 - Copy of blank promissory note form to be used if loan is not a part of Aggie Bond program.

b. IADA will submit to lender:

- (1) If participation is for a project that is NOT also funded through the IADA beginning farmer loan program (BFLP), IADA will forward loan participation certificate and agreement.
- (2) If participation is for a project that IS also funded through the IADA beginning farmer loan program (BFLP), the IADA will forward the loan participation certificate and agreement along with the closing documents for the BFLP bond.

NOTE: A Loan Participation coupled with a loan with the Beginning Farmer Loan Program will need to close the same day.

4.8(3) *On loan closing day:*

a. Lender closes loan for the approved agricultural purchase and forwards the following to the IADA:

- (1) Original signed loan participation certificate and agreement.
- (2) Copy of signed promissory note.
- (3) Copy of signed mortgage, if applicable.
- (4) Copy of signed security agreement.
- (5) Copy of bill of sale, purchase agreement, or sales receipt of purchase(s).
- (6) Copy of recorded UCC filing.

b. Upon receipt of the above items, the IADA will disburse their participation funds, less 1 percent loan participation fee.

4.8(4) *Final title opinion.* For real estate loans, the participating bank will be expected to forward a copy of the final title opinion within 90 days after closing.

4.8(5) *Recording documents and fees.* Any recording or filing fees or transfer taxes associated with the participated loan will be paid by the borrower or lender and not the authority. Also, the authority will have no responsibility with respect to the preparation, execution, or filing of any declaration of value or groundwater hazard statements.

25—4.9(175) Loan administration procedures.

4.9(1) *Lender's responsibilities.* The lender is responsible for servicing the participated loan following accepted standards of loan servicing and transferring participation payments to the authority.

a. The lender shall:

- (1) On an annual basis, provide the authority with copies of a current financial statement or a current tax return, or both.
- (2) Provide copies of insurance to the authority with the lender named as loss payee. Lender will apply payments to the participated loan on a pro-rata basis.

b. The lender shall not, without prior consent of the authority:

- (1) Make or consent to any substantial alterations in the terms of any participated loan instrument;

- (2) Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;
- (3) Lender will not use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;
- (4) Accelerate the maturity of the participated loan;
- (5) Sue upon any participated loan instrument;
- (6) Waive any claim against any borrower, cosignor, guarantor, obligor, or standby creditor arising out of any instruments.

4.9(2) *Payment due dates.* Payment due dates for the participation will be the same as for the lender's share of the loan.

4.9(3) *Prepayment penalty.* There is no penalty for early repayment of principal or interest.

4.9(4) *Repayment proceeds and collateral.* Without limitation, the repayment of proceeds and collateral shall include rights of setoff and counterclaim, which the lender or the authority jointly or severally may at any time recover on any participated loan.

4.9(5) *Subsequent loans.* Any loan or advance made by a lender to a borrower subsequent to obtaining a participation under the program and secured by collateral or security pledged for the participated loan will be subordinate to the participated loan.

4.9(6) *Events of loan default.*

a. Default will occur when loan payment is 30 days past due. Notice to cure will be sent to borrower with a copy sent to the authority; and the lender will take appropriate steps to cure the default through mediation, liquidation, or foreclosure if needed.

b. After a participated loan is in default for a period of 30 days, the lender shall file monthly reports regarding the status of the participated loan to the authority.

c. The authority may, anytime a participated loan is in default, purchase the unpaid portion of the participated loan from the lender including the note, security agreements, additional guarantees, and other documents. The authority would become the servicer of the participated loan in such case.

4.9(7) *Applying principal and interest payments.* Lenders shall receive all payments of principal and interest. All payments made prior to liquidation or foreclosure shall be made on a pro-rata basis. All accrued interest must be paid to zero at least annually on the anniversary date of the note.

4.9(8) *Application of proceeds of loan liquidation.* Application of proceeds of loan liquidation will be determined after a written liquidation plan is approved by the authority or the authority's loan committee. All amounts recovered upon liquidation or foreclosure will be applied first to the unpaid balance of the lender's portion and then to the unpaid portion of the participation's portion. All funds received from liquidation or foreclosure procedures shall be applied in the following order of priority:

First Priority: To the payment of the outstanding principal of and accrued interest on the lender's portion of the participated loan;

Second Priority: To the payment of the outstanding principal of and accrued interest on the authority's participation;

Third Priority: To the payment on a pro-rata basis of all reasonable and necessary expenses incurred by the lender or the authority in connection with such liquidation or foreclosure procedures.

25—4.10(175) Source of participation funds. Funding for the program is derived from the Iowa Rural Rehabilitation Corporation Assets (IRRC). The IRRC assets were obtained from the Rural Rehabilitation Corporation Trust Liquidation Act, 40 U.S.C. 440 et seq., and prior thereto from the Federal Emergency Relief Act of 1933, 48 Stat. 55, the Act of February 15, 1934, 48 Stat. 351, and the Act of June 19, 1934, 48 Stat. 1055. The administration of the fund was transferred to the authority in 1980 when the authority was created.

25—4.11(175) Right to audit.

4.11(1) The authority shall have, at any time, the right to audit records of the lender and the borrower relating to any participated loan made under the program.

4.11(2) Loans made pursuant to the provisions of this program may be subject to review by the Iowa division of banking for the purpose of determining that the underwriting requirements of the program have been complied with by the lender.

These rules are intended to implement Iowa Code section 175.13A.

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